

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**DARRYL FORD v. CHERRY LINDAMOOD, WARDEN**

**Direct Appeal from the Circuit Court for Wayne County  
No. 13830 Robert Lee Holloway, Jr., Judge**

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**No. M2006-00627-CCA-R3-HC - Filed October 27, 2006**

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Petitioner, Darryl Ford, appeals the trial court's denial of his petition for writ of habeas corpus. The State has filed a motion pursuant to Rule 20, Rules of the Court of Criminal Appeals of Tennessee, for this Court to affirm the judgment of the trial court by memorandum opinion. We grant the motion and affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Wayne County Circuit Court  
Affirmed Pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Darryl Ford, Clifton, Tennessee, *pro se*, for the appellant

Paul G. Summers, Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; and T. Michel Bottoms, District Attorney General, for the appellee, State of Tennessee

**MEMORANDUM OPINION**

On November 21, 2002, Petitioner pled guilty to three counts of aggravated rape and one count of attempted aggravated rape. He was sentenced to serve twenty-five years at one hundred percent for the aggravated rape conviction and ten years at thirty percent for the attempted aggravated rape conviction. The sentences were ordered to be served concurrently in the Department of Correction for a total effective sentence of twenty-five years. On August, 11, 2005, Petitioner filed a *pro se* petition seeking habeas corpus relief. The trial court summarily dismissed his petition. On October 18, 2005, Petitioner filed a notice of appeal. In his appeal, Petitioner argues that he is entitled to habeas corpus relief because the indictments failed to properly allege the elements of the crime charged.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated section 29-21-101 *et seq.* codifies the applicable procedures for seeking a writ. While there is no statutory time limit in which to file for habeas corpus relief,

Tennessee law provides very narrow grounds upon which such relief may be granted. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” *Church v. State*, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); T.C.A. § 29-21-101. A habeas corpus petition may be used only (1) to contest void judgments which are facially invalid because the convicting court was without jurisdiction or authority to sentence a defendant; or (2) if defendant’s sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). The petitioner bears the burden of establishing either a void judgment or an illegal confinement by a preponderance of the evidence. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). If the petitioner carries this burden, he is entitled to immediate release. *Id.* However, “where the allegations in a petition for writ of habeas corpus do not demonstrate that the judgment is void, a trial court may correctly dismiss the petition without a hearing. *McLaney v. Bell*, 59 S.W.3d 90, 93 (Tenn. 2001) (citing T.C.A. § 29-21-109 (2000)).

In the present case, Petitioner does not contend that his sentences have expired, thus, he is only entitled to relief if his judgments are void. As stated above, a void judgment is “one in which the judgment is facially invalid because the court did not have the statutory authority to render such judgment.” *Dykes v. Compton*, 978 S.W.2d 528, 529 (Tenn. 1998). Petitioner contends that the trial court was without jurisdiction to render a judgment against him because the aggravated rape indictment in Count 2 and the Attempted Aggravated Rape indictment in Count 4 failed to sufficiently allege the elements of the offense with which he was charged. A valid indictment is essential to vest jurisdiction in the convicting court, and therefore an indictment that is so defective that it fails to vest jurisdiction may be challenged in a habeas corpus proceeding. *Wyatt v. State*, 24 S.W.3d 319, 323 (Tenn. 2000). An indictment must provide sufficient information “(1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy.” *State v. Hill*, 954 S.W.2d 725, 727 (Tenn. 1997).

Both counts of the indictment about which Petitioner complains name Petitioner as the accused, the date of the offense, the actus reus and mens rea of each offense, and each count references the statutes defining the charged offenses. Given these circumstances, it is clear that each count in this indictment is sufficient to vest jurisdiction in the convicting court. *See State v. Sledge*, 15 S.W.3d 93, 95 (Tenn. 2000); *State v. Carter*, 988 S.W.2d 145, 148 (Tenn. 1999); *Ruff v. State*, 978 S.W.2d 95, 100 (Tenn. 1998); *State v. Hill*, 954 S.W.2d 725, 728 (Tenn. 1997). The language was drafted in accordance with Tennessee Code Annotated section 40-13-202. The counts of the indictment were sufficient to meet the constitutional requirement of giving Petitioner notice regarding the charges against him, they furnished the trial court an adequate basis for the entry of a proper judgment, and they protected Petitioner from double jeopardy. *Hill*, 954 S.W.2d at 727. Therefore, the trial court was correct in summarily dismissing the appellant’s habeas corpus petition.

The judgment was rendered in this matter in a proceeding before the trial court without a jury, and the judgment was not a determination of guilt, and the evidence does not preponderate against the finding of the trial court.

### **CONCLUSION**

Upon review of this matter, this Court concludes that no error of law requiring a reversal of the judgment of the trial court is apparent on the record. Petitioner has not established that he is entitled to habeas corpus relief based on a void judgment. Accordingly, the state's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

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THOMAS T. WOODALL, JUDGE